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November 26, 2013

The Hon. Molly Dwyer
United States Court of Appeals, Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1518

Re: *Richards v. Prieto*
U.S. Court of Appeals, Ninth Cir. No. 11-16255
Argued December 6, 2012

Notice of Supplemental Authority, Fed. R. App. P. 28(j)

Dear Ms. Dwyer:

This Court's recent decision in *United States v. Chovan*, No. 11-50107, 2013 U.S. App. LEXIS 23199 (9th Cir. Nov. 18, 2013) calls for reversal.

Chovan adopted, for at least some Second Amendment cases, the two-step inquiry by which courts first ask whether a regulation implicates Second Amendment rights, and if so, tailor a level of *heightened* scrutiny based on the extent to which the regulation implicates the Second Amendment. *Id.* at *22-*23. "[W]e reject rational basis review and conclude that some sort of heightened scrutiny must apply." *Id.* at *26.

Chovan thus precludes the notion that heightened scrutiny "applie[s] only where a *substantial* burden was imposed." Appellees' Br. at 31. Notably, *Chovan* followed *Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011), see 2013 U.S. App. LEXIS 23199 at *23, *26-*27, which specifically rejected an "undue burden" test. *Ezell*, 651 F.3d at 706-07.

Ms. Dwyer
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Accordingly, if means-ends scrutiny must apply to California's "good cause" law, and/or to Sheriff Prieto's challenged policies (Plaintiffs challenge both), Appellants' Br. 7-8, 44-45, neither the rational basis test applied by the lower court, nor Defendants' proposed "substantial burden" test are available.

In *Chovan*, this Court applied intermediate scrutiny in evaluating 18 U.S.C. § 922(g)(9) because, although that provision substantially burdened Second Amendment rights, *Chovan* was not "a law-abiding, responsible citizen." *Chovan*, at *27. *Chovan* alternatively described the Second Amendment's "core" as the right "to use arms in defense of hearth and home" and "to possess and *carry* a weapon for self-defense." *Id.* (citations omitted) (emphasis added). *Chovan* did not concern carrying handguns outside the home for self-defense.

Even if carrying handguns for self-defense falls outside the Second Amendment's "core," a claim Plaintiffs reject, Sheriff Prieto's practices implicate law-abiding responsible citizens' exercise of a fundamental right. If any means-ends standard applies, the standard would be strict scrutiny. But Plaintiffs should prevail even under intermediate scrutiny, as Sheriff Prieto can have no legitimate interest in restricting a fundamental right, and his practices do not substantially fit any important policy goals. Appellants' Br. 56-58; Reply Br. 17-28.

Sincerely,

/s/ Alan Gura
Alan Gura

This body of this letter contains 343 words.

cc: Counsel of Record via ECF

CERTIFICATE OF SERVICE

On this, the 26th day of November, 2013, I served the foregoing by electronically filing it with the Court's CM/ECF system, which generated a Notice of Filing and effects service upon counsel for all parties in the case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this the 26th day of November, 2013.

/s/ Alan Gura
Alan Gura